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DEPARTMENT OF STATE

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ACTION MEMORANDUM

S/S ✓

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Orig to S/P

CONFIDENTIAL

February 4, 1977

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T : The Secretary

THROUGH: The Deputy Secretary

FROM : S/P - Anthony Lake

Human Rights

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY R. Valas DATE 12/23/83
MDS ☐ or XDS ☐ EXT. DATE
TS AUTH. REASON(S)
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Issue for Decision

Interest in human rights continues to grow. A PRM on human rights may result from an interagency meeting convened by the NSC, February 2. Brzezinski's stress there on finding a "constructive way to infuse human rights into foreign policy" reflects a gathering belief that one of the main questions before the Carter Administration is, not whether we will help promote human rights, but how. This memorandum thus suggests both short- and longer-term measures for implementing the President's commitment to internationally recognized human rights.

Background/Analysis

The Administration's strong interest in human rights is clear. The President's statements on this subject reflect the expressed will of the Congress, specific US endorsement of the UN Charter and Universal Declaration of Human Rights, and the belief that there is a connection between what we believe at home and what we do abroad.

How to act on the President's statements is, of course, less clear. Implementation depends on our designing an overall strategy--with a coherent set of goals, sense of

priorities, and assessment of US leverage. The State Department now lacks such a strategy. Attempts to deal with pending problems are often uncoordinated. There is no focal point for considering future initiatives or establishing a general context that could reduce the need for tough decisions in other areas under crisis conditions.

Several approaches (singly or in combination) could help:

1. Agenda for immediate consideration. Although we would caution against rushing into word or deed without more careful review of our overall objectives in human rights, there are some steps that could be taken quickly. Such measures could give immediate substance to statements from the Carter Administration without constraining later choices. Among items for your priority consideration are the following:

a. Expedited announcement of well-known and well-qualified coordinator for the human rights office (D/HA). The authority of that person and his/her access to you would be a useful signal to the Congress and elsewhere and a needed channel for in-house decision-making.

b. Authorization for the Deputy Secretary to establish an ad hoc Human Rights Coordinating Group, administered by D/HA and to include, as appropriate, representatives from P, T, L, H, S/P, IO, PM, EB, and the regional bureaus--initially at the Deputy/Assistant Secretary level. Such a mechanism could help assure Department-wide consensus and coordination on cross-cutting issues in the human rights area. Among matters for immediate attention: the security assistance package due for Presidential decision next week, votes this month in the Inter-American Development Bank, agreement on general guidelines for press inquiries, and reference to human rights in PRM's and other interagency exercises.

c. Recommendation that the President declare US intention to sign UN human rights covenants. Since

the President is already on record in behalf of ratifying the genocide convention, the convention against racial discrimination, and the two covenants on political and economic rights, and since the next session of the UN Human Rights Commission convenes February 7, the time may be ripe for the State Department to support a Presidential push for ratification of all four. Although L's study on this subject is not finished, preliminary findings suggest that we could defuse Congressional opposition by indicating that we would accompany signature and ratification with appropriate reservations and statements of understanding on points where there is incompatibility between these instruments and the Constitution and relevant US legislatic and court decisions.

d. Action on bilateral issues. The Department will be under increased pressure from the Congress (most predictably, in upcoming hearings before the Humphrey Subcommittee) to explain how we factored human rights into our positions on security assistance. Given the imminence of a Presidential decision on the security assistance package next week, we should urgently consider our public position on the human rights aspects of the package and how decisions on individual countries could be best communicated, perhaps by the Deputy Secretary, to the countries concerned and to the Congress. There will also be several Harkin Amendment votes this month in the Inter-American Development Bank which could involve comparably difficult decisions and similar needs for communication.

e. Consultations with the Congress. You could talk with several leading Congressional advocates of human rights--both in the near future and after the completion of the Department's overall review of human rights policy. In your early meetings with such Hill representatives, you could seek out their views, promise close cooperation, and report on the first steps taken by this Administration. Other Department officers could meet with members of Congress and staff to seek ideas for our own policy review.

2. Development of longer-term strategy. Although we do not advocate prolonged study, we do see value in putting specific decisions into a larger and more balanced context. We believe that either State Department studies or any possible PRM's on human rights should avoid precipitate recommendations and instead stress formulation of a more general framework for US decisions. We therefore suggest consideration of the following:

a. Formulation of overall policy strategy. Such an exercise should include general principles, factors to be considered on a case-by-case basis, the range of available responses, potential risks and/or limits to human rights initiatives, and elements of a proposed strategy. (See Tab A for draft S/P outline for human rights strategy paper.) S/P could take the lead on this exercise, in conjunction with D/HA and the relevant bureaus. An initial draft could be available for review by the Deputy Secretary this month.

b. Statement of criteria for implementation of human rights provisions in current legislation. Because there is so much confusion about what constitutes a "consistent pattern of gross violations of internationally recognized human rights" (basis for decisions on US economic assistance, security assistance, and loans to some international financial organizations), the Department of State, in consultation with the Congress, should try to clarify criteria so that we can be more responsive, both to the Hill and overall US foreign policy objectives. S/P, in consultation with D/HA, has taken a preliminary cut at this problem (see Tab B). We could refine a draft for review by the Deputy Secretary.

c. Drafting and coordination of bureau strategy papers. Papers, to be done in parallel with the above, could help provide balance between, on the one hand, stress on human rights and Congressional concerns and, on the other, broader regional/functional foreign policy concerns. They should concentrate on identifying those national governments permitting or perpetrating a consistent pattern of gross violations of internationally

recognized human rights, suggesting what US actions could help or hurt the situation, and how such actions might affect other US national interests.

d. Proposal for Presidential attention. At some later point, you may want to encourage the President to complement his already considerable support for human rights with such initiatives as a major foreign policy address (dealing entirely or in part with human rights) or a well publicized meeting with outside spokesmen/experts on this subject.

e. High-level speech on human rights. In the not-too-distant future, you could make a speech or present a statement before the Humphrey hearings in early March.

f. Consideration of change in current legislation. Working together with the Congress on promotion of human rights may lead to opportunities to amend some current legislation which either does not serve the intended purpose of furthering human rights or runs counter to other foreign policy objectives--or both. In addition, we may find more ways to shift from legislation with a punitive cast to more positive measures that reward nations improving their observance of human rights.

Recommendations for Action

1. Authorize the Deputy Secretary to establish an ad hoc Human Rights Coordinating Group, as described above.

Approve ✓ CW/BR 2/11 Disapprove _____

2. Instruct the Deputy Secretary, with or without the Coordinating Group, to consider the action items noted above.

Approve ✓ CW/BR 2/11 Disapprove _____

3. Mandate S/B, together with D/HA and other interested bureaus, to draft (as per above and Tabs A and B):

a. overall strategy paper;
b. guidelines for implementation of human rights provisions in current legislation.

Approve ✓ cc/hmc 2/11 Disapprove _____

4. Sign the memorandum on human rights at Tab C. Attached for your information at Tab D are the instructions on regional strategy papers on human rights to be issued by the Executive Secretary.

Approve ✓ Disapprove _____

DN/PC 2/11

Attachments:

Tab A - Draft S/P outline for human rights strategy paper
Tab B - Draft "Guidelines on US Foreign Policy for Human Rights"
Tab C - Memorandum on human rights for the Secretary's signature
Tab D - Instructions on regional strategy papers on human rights to be issued by the Executive Secretary

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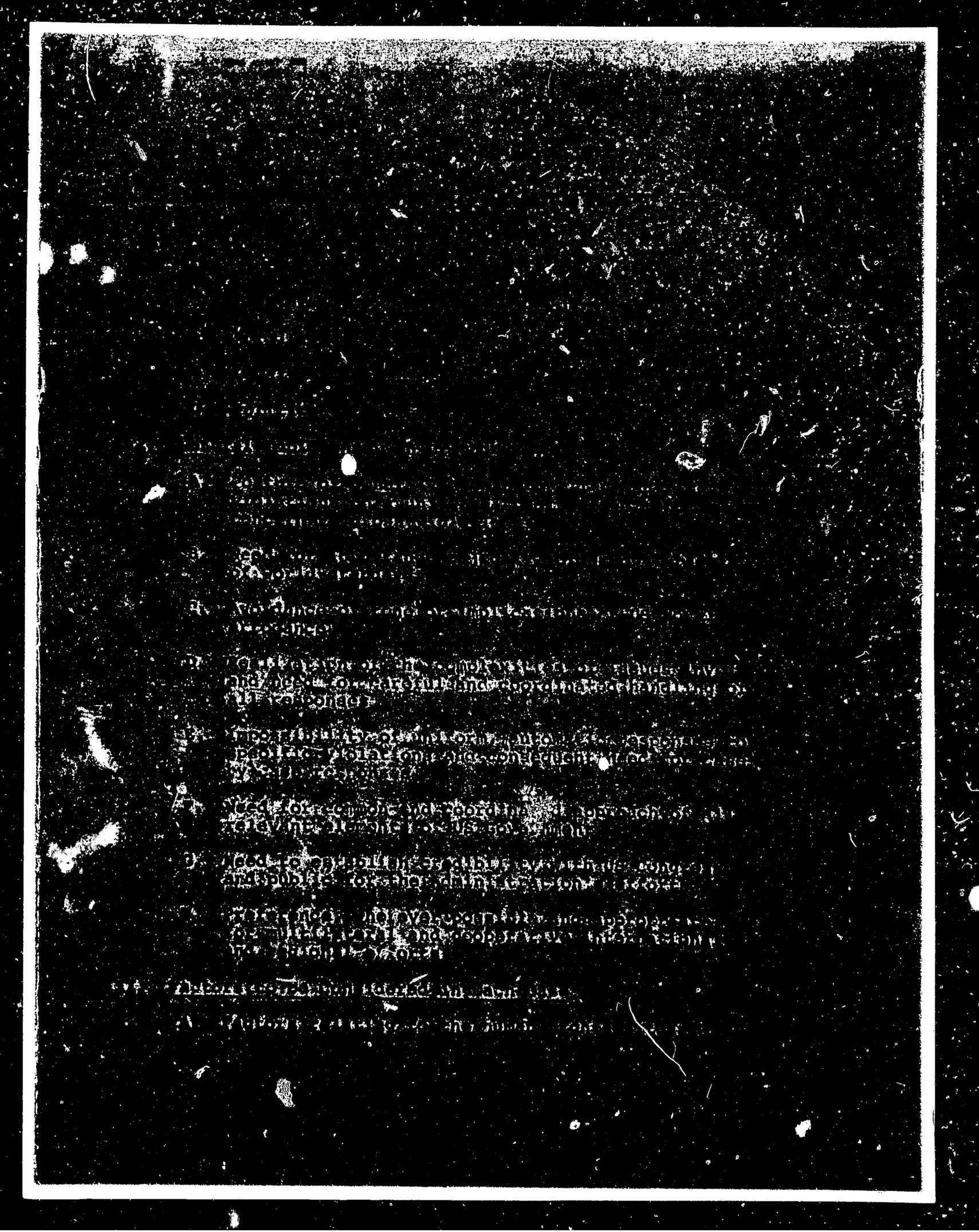

1. Nature and extent of violations

2. Level of political involvement

3. Violation of human rights [illegible]

4. Degree of government control and responsibility for violations

5. Validity of any mitigating circumstances or justifications

B. Other factors affecting potential US response

1. Range and significance of other US national interests involved

2. Nature of US association with regime

3. Degree of estimated US influence on human rights behavior of regime

4. Attitude of internal democratic opposition, if any, and of potential alternative political leaders to any particular US response

5. Degree of US Congressional, media and public interest in situation

6. Attitudes and roles of other governments

7. Estimate of likely consequences of any US response in terms of human rights conditions and of other US interests

C. Regional factors

1. In Latin America

a. Historic sensitivity to US penchant for interventionism

b. Need for balanced application to regimes of different political and ideological orientations

2. In Africa

a. Overriding interests of countries in [illegible]

b. Sensitivity of leaders to any [illegible] action which may appear [illegible]

[illegible]

[illegible]

[illegible]

V. Potential Risks in Human Rights Policy

A. Possible consequences of impinging on sovereignty sensitivities of individual countries

1. Strained US relations with regime leaders, with possible negative impact on other US national interests

2. Opportunities for regime leaders to arouse popular nationalistic support for resistance to foreign interference

3. Possible counterproductive results of US response leading to more severe repression

B. Possible negative consequences for human rights efforts generally

1. Widespread loss of faith in human rights efforts if expectations are raised too high in this relatively intractable area and results are meager

2. Loss of impact of public statements if employed too frequently, with the US ultimately ignored as a tiresome (and ineffective) international scold

3. Danger that authoritarian regimes in a region, or around the world, will join forces, especially at the UN and OAS, to resist large-scale, across-the-board human rights campaign

4. Inhibiting effect on whole effort if one or two major fiascos occur -- such as replacement of authoritarian regime by one more repressive following US criticism

C. Problem of inconsistencies in US responses

1. Likely pressure for US to be obviously even-handed in treatment of human rights violations in strong and in weak countries, in left and in right regimes, in allied and in adversary states

2. Difficulty of demonstrating even-handedness if quiet diplomacy is used in some cases and publicized appeal is used in others of an apparently similar nature

3. Use of argument about inevitable inconsistencies ("lack of balance," "double standard") as excuse for US not taking action in this field at all

D. Risks of inaction

1. Continued erosion of politically valuable US image as supporter of freedom everywhere

2. Injury to US interests and loss of US influence in a country whenever its authoritarian regime, with which the US is identified, is swept away

3. Loss of opportunities to identify with future leadership elements in many countries

4. Weakened US posture in ideological contest with totalitarian adversaries

5. Prospect of growing preponderance of nations in the world that do not share our values and consequent danger to our own values at home if we fail to oppose this trend

6. Loss of US public and media support for US foreign policy

7. Continued loss of Executive Branch initiative to Congress on important aspects of foreign policy

RECOMMENDED STRATEGY

I. Procedural Steps

A. Development and approval of a carefully considered strategy and detailed plans to implement a more vigorous national policy to advance human rights around the world, including special implementing strategies for each geographic region to take common regional factors into account

B. Public announcement and clarification of US policy in statements that establish a general US posture of concern for human rights, but which present some of the complexities involved, which avoid raising unrealistic expectations and which allay fears that we have embarked on a crusade to drastically alter the [illegible] 100-odd governments around the world

C. Common and coordinated line on human rights by all US agencies operating overseas so that diplomatic efforts of US missions are not undermined by contrary signals from other US sources; reexamination of US contacts with repressive internal security elements abroad and their implications for human rights

D. Establishment with Congress of Department's credibility on human rights policy to permit Executive Branch to regain initiative in this field and to have more flexibility on use of levers such as aid and arms policies, public reporting on human rights conditions, and voting in international financial institutions, all of which are now mandated by the Congress

E. Establishment in Department of procedure for making recommendations to Secretary on major decisions on human rights issues, whether in bilateral context or in multilateral framework so that impact on all Departmental elements can be carefully weighed -- including P, T, Regional bureaus, L, H, D/HA, S/P, IO, PM, and AID

F. Internal Departmental information program to clarify role of missions in human rights efforts and to train junior and mid-career officers to understand complexities

G. Initiation of needed studies to analyze usefulness of various diplomatic tactics, symbolic gestures, substantive actions and multilateral approaches in achieving favorable results

II. Substantive Measures

A. Steps to put our own house in order by moving forward on ratification of pending UN covenants, by legislating more generous refugee, asylum and visa policies, and by making more emphatic representations on behalf of US citizens adversely affected by repressive measures abroad

B. Employment generally of unpublicized diplomatic approaches in dealing with human rights problems and development of procedures and tactics which make such diplomatic efforts as effective as possible

C. Selection of, and concentration on, a limited number of "worst" cases -- perhaps one or two in a region -- on which to focus in the hope of gathering the largest

possible number of allies, including milder authoritarian regimes in the "Third World," in a common attempt to raise international standards gradually from the current "bottom" of official murder and torture. Such an effort might typically have two phases:

1. Intensive discussions with "target" regimes to press for improvements in their practices, and clarification, wherever appropriate and possible, of the minimum steps that are sought from them if they are to get off the hook (to reduce the paranoia and sense of siege which dominate some of them and motivate their extreme measures)

2. If such tactics fail, shift to public statements and other more intensive measures, both to bring added pressure and to dissociate US clearly from a repressive regime

D. Employment of diplomatic style that reduces symbols of US embrace of authoritarian regimes and serves to communicate various degrees of disapproval of repressive measures and appropriate degrees of detachment from repressive regimes

E. Promotion of positive short-range programs to applaud and encourage favorable human rights trends and long-range technical assistance and cultural exchange programs to help foster growth of political institutions and practices that favor protection of individual rights

F. Strengthening of US role in international bodies dealing with human rights, use of multilateral approaches to human rights situations in individual countries, and enlistment of help of like-minded countries in bringing pressure to bear on human rights violators wherever the indications are this tactic might be effective

Drafted: S/P:ASirkin
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Guidelines on US Foreign Policy for Human Rights

General Policy

Protection and promotion of human rights are fundamental to the formulation and execution of US foreign policy. The Department of State must demonstrate leadership in this area and remain alert to identifying more effective means to pursue this objective.

Pertinent Legislation

The Congress has recently enacted legislation designed to help assure the observance of human rights abroad, in the context of certain U.S. bilateral and multilateral relations:

-- The Harkin Amendment to bills authorizing increased US participation in the Inter-American Development Bank (IDB) and initiating US participation in the African Development Fund (ADF) requires that the US Executive Directors to those banks vote against any loan or grant to any country that "engages in a consistent pattern of gross violations of internationally recognized human rights...unless such assistance will directly benefit the needy people of the country." Similar provisions have been incorporated into the legislation authorizing foreign development assistance.

-- The International Security Assistance and Arms Export Control Act of 1976 states that the US should not provide security assistance "to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights" and that whatever security assistance is provided should "promote and advance human rights and avoid identification" of the United States with governments that deny their people human rights. The Act calls on the Secretary of State to provide "full and complete" reports on the human rights practices in each country receiving security assistance.

Checklist for Guidance

Judgments about human rights are necessarily difficult. The Department cannot provide one set of definitive guidelines for all cases. We think it necessary, however, that our personnel at least ask the same questions and proceed as consistently as possible on the basis of comparable data and standards.

To that end, Department officers--whether preparing reports in the field or making findings in Washington--should proceed with the following sequential checklist of questions:

1. What information is available? Embassy investigative reporting, while essential, is not enough. Department officers should seek out evidence provided by the intelligence community, non-governmental organizations, multilateral organizations and Congressional hearings and weigh carefully the reliability of these varied sources. Such data should provide the basis for answering the questions in the following paragraphs.

2. Are there violations of "internationally recognized" human rights? The prime point of reference for this determination, in the view of the Department and the Congress, is the UN Universal Declaration of Human Rights. The main focus for purposes of both field reporting and Department decision-making should be on crimes against the person as described in Articles III, V, VIII, IX, X, and XI of the Universal Declaration. (See attachment.)

3. If there are such violations of "internationally recognized human rights," were those violations "gross" in nature? Present legislation makes clear that primary attention centers on government-perpetrated or tolerated torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to the right to life, liberty, and the security of person.

4. If there are such "gross" violations, is there a "consistent pattern" of same? Since no mathematical formula is appropriate to the wide variety of existing cases, Department personnel should look instead for regular recurrences (for regional, class, ethnic or political patterns), and for changes in the extent of violations over time. The numbers of violations in each category should be reported as precisely as possible.

5. If there does appear to be a case of "consistent pattern of gross violations of internationally recognized human rights," what is the role of the government in question? Department personnel should try to provide documentary evidence such as laws, decrees, directives on internal security, etc. showing whether the government itself, through acts of commission or omission, bears responsibility for violations against human rights; whether the government has taken steps to improve the protection of human rights; and whether that government has cooperated with outside inquiries on human rights.

6. Finally, what general [illegible] should the Department, in consultation with the Congress, consider as it formulates policies for achieving progress on human rights? Our efforts in behalf of human rights may require us to weigh the following: the degree and character of other U.S. interests in the country; the degree of U.S. influence in the country; likely third-country reaction to U.S. action or inaction on human rights; reaction of democratic elements in the country concerned to possible U.S. actions; and possible retaliation by the host country against U.S. positions on human rights. We may also take into consideration the past and present legal and cultural environment of a given country, the existence of an internal or external threat to national security, the violent or non-violent character of the government and its opposition. However, with specific regard to implementation of legislation governing development assistance and international financial institutions, the only exception to making judgments wholly on the basis of observance of human rights is for situations on which assistance goes directly to "needy people."

Procedure

The above guideline questions for thinking and acting in behalf of human rights are part of a continuing Department effort to assure greater progress in this area. To help assure specific implementation of this goal, the following actions will be taken:

1. In complying with human rights legislation relating to U.S. participation in international financial institutions, the Bureau of Economic and Business Affairs will provide a schedule of pending loans together with information on whether the Harkin amendment is applicable to the loan or not.

D/HA in conjunction with appropriate geographic bureaus and H, L, EB and S/P will review this material to determine whether, in cases that do not fall under the "needy people" provision of the Harkin amendment, there is evidence of a consistent pattern of gross violations of internationally recognized human rights.

Should this review result in agreement, D/HA will so notify the Deputy Secretary, who will make the final decision. Should there be disagreement, there will be a meeting of the Assistant Secretaries concerned with the Deputy Secretary, who will either make the final decision or refer the matter

to the Secretary.

2. In the case of human rights legislation regarding AID's development assistance programs, necessary steps will be taken by the AID Administrator, in coordination with D/HA and the concerned bureaus in the Department, to take the foregoing criteria into consideration in reaching necessary determinations.

3. In the case of security assistance, the foregoing criteria will be applied in the development and review of program proposals by D/HA and concerned bureaus of the Department through the regular processes of the Security Assistance Review Committee and any successor organizations.

Article III

Everyone has the right to life, liberty, and the security of person.

Article V

No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishme.

Article VIII

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article IX

No one shall be subjected to arbitrary arrest, detention, or exile.

Article X

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article XI

1. Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

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THE SECRETARY OF STATE

WASHINGTON

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February 11, 1977

MEMORANDUM FOR ALL ASSISTANT SECRETARIES

Human Rights

The President has stressed this Administration's strong commitment to the promotion of human rights. The Department of State must help implement this goal of US foreign policy.

To carry out a policy which is constructive for furthering both human rights and our other national objectives, we need an overall human rights strategy and internal mechanism for helping assure balanced decisions in this area. To that end, I have taken the following actions:

-- Asked the Deputy Secretary to establish an ad hoc Human Rights Coordinating Group, administered by D/HA and to include, as appropriate, representatives from P, T, L, H, S/P, IO, PM, EB, AID, and the regional bureaus--initially at the Deputy Assistant Secretary level. The HRCG will be the forum for coordination of human rights policymaking within the Department.

-- Requested the Policy Planning Staff, in consultation with D/HA and cooperating with other interested bureaus, to formulate a broad human rights policy for my review.

In addition, I am now asking that regional bureaus develop strategy papers focused on key human rights problems under their purview and tactics for dealing with them. Following the first meeting of the Human Rights Coordinating Group, detailed instructions will be issued by the Executive Secretary.

Cyrus Vance

Cyrus Vance

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DEPARTMENT OF STATE

Washington, D.C. 20520

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February 15, 1977

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MEMORANDUM TO ALL REGIONAL ASSISTANT SECRETARIES

Subject: Guidelines for Preparation of Regional Strategy Papers for the Promotion of Human Rights

As the Secretary directed in his memorandum of February 11, the regional bureaus are to prepare papers which propose human rights strategies appropriate in their regions. These strategies should contribute to the overall human rights policy being developed by the Policy Planning Staff.

Each regional strategy plan should cover the following points:

1. General considerations affecting the human rights situation in the region as a whole.

2. Description of conditions in the countries with the most serious problems. (Generally the human rights violations with which we are most urgently concerned involve widespread gross violations directed against the person, such as officially sanctioned murder, torture and prolonged imprisonment without fair trial.) These descriptions should be brief summaries and not detailed material of the type included in the security assistance reports.

3. A strategy for dealing with these worst cases which should include such items as:

a. What specific actions would we like the governments to take and how should this be communicated to them?

b. What leverage can and should be used?

c. What favorable response should we be prepared to give if the governments accept our suggestions?

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d. What are the necessary limits of our possible efforts and why?

e. Are there multilateral channels that might be used to affect the situations favorably?

4. Description of human rights situations of a less egregious character in other countries that we may be able to affect favorably and suggested tactics for dealing with them.

5. Steps the United States may take that would favorably affect the human rights situation in individual countries or the region as a whole.

Even though the preparation of these papers is intended to proceed in parallel with the work on the overall strategy paper, serious divergences are not expected since the overall paper will be developed in close cooperation with the relevant bureaus.

The regional papers should be submitted to D/HA by COB February 22. Direct any questions on format or the Department's overall strategy exercise to Mr. Spear (extension 21181).

C. Arthur Borg
Executive Secretary